IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

L.P.A. No. 119 of 2006 (O.&M.)
Date of Decision: 26.11.2007

Dr.Gulshan Satija.

..... Appellant through Shri
D.S.Patwalia, Advocate.

Versus

The New India Assurance Company.

..... Respondent through Shri
Ashwani Talwar, Advocate.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

....

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

C.M.No.609 of 2006

The application is allowed and the delay of 100 days in the re-filing of the appeal is condoned.

L.P.A.No.119 of 2006

The limited grievance raised in the present appeal under Clause X of the Letters Patent is with regard to the following finding recorded by the learned Single Judge while dismissing C.W.P.No.15822 of 2000 filed by the appellant:-

"Mr.Patwalia then submitted that the order was passed by the

> General Manager who was the Appellate Authority and, therefore, the petitioner was deprived of his right to appeal. It is true that the General Manager is the Appellate Authority but under Rule 40 of the General Insurance (Conduct, discipline and Appeal) Rules,1975, a provision has been made giving liberty to an employee to address a Memorial to the Chairman/ Chairman -cum- Managing Director within six months from the date he receives a copy of the Appellate Authority. Therefore, even if the order was passed by the Appellate Authority, the petitioner could still have preferred a Memorial before the Chairman/ Chairman-cum- Managing Director of the Company."

Assailing the above reproduced finding, the learned counsel for the appellant contended that once the relevant service rules provided for filing of an appeal against the order of the Appellate Authority, then if the order of the first instance is passed by the Appellate Authority itself, it vitiates the entire proceedings and such an order ought to be treated as non est, as it results in deprivation of a right of appeal to the affected employee. In support of his contention, he placed reliance on the judgments reported as Surjit Ghosh Versus Chairman & Managing Director, United Commercial Bank, and others, 1995(2) S.C.T. (S.C.) 352 and Electronics Corporation of India Versus G.Muralidhar, 2001(4) S.C.T. (S.C.) 391.

The Apex Court in the aforementioned judgments has clearly observed that such an order cannot be sustained as the employee cannot be

deprived of a substantive right, especially when there is a provision of appeal against the order of the disciplinary authority and since the order of the disciplinary authority is passed by the higher authority, who is also the appellate authority, it results in serious prejudice to the concerned employee.

The above-said position of law could not be effectively rebutted by the learned counsel appearing for the respondent, who contended that there was a provision for addressing a Memorial to the Chairman/ Chairman -cum- Managing Director within six months of the passing of the order and since that was not availed of by the appellant, he was precluded from making any grievance at this stage.

We have heard the learned counsel for the parties and have perused the impugned judgment, as also the relevant case law which has been adduced before us.

Concededly, the order was passed by the appellate authority assuming the role of the disciplinary authority. The order in the instant case was passed by the General Manager, who was also the appellate authority under Rule 40 of the General Insurance (Conduct, Discipline and Appeal) Rules,1975. Since a provision for filing an appeal against the order of the disciplinary authority has been made, the passing of the order by the same authority would seriously jeopardize the right of the appellant to file an appeal. We feel that the observations of the Apex Court in the aforementioned judgments are clearly attracted to the facts of the instant case and, therefore, in view of this, we accept the appeal and set aside the

order passed by the General Manager. However, the respondent shall be at liberty to pass a fresh order in accordance with the aforementioned rules.

(Vijender Jain)
Chief Justice

November 26,2007
"SCM"

(Mahesh Grover)
Judge